

PUBLIC SERVICE COMPANIES: SMALL WATER OR SEWER PUBLIC UTILITY ACT.

**COUNTIES, CITIES AND TOWNS: FRANCHISES, PUBLIC PROPERTY, UTILITIES -
GENERAL PROVISIONS FOR PUBLIC UTILITIES.**

State Corporation Commission and locality have authority to regulate rates of small water utility in accordance with "just and reasonable" standard required by Act. Commission has authority to set rate when hearing and rate-setting provisions of Act are triggered. If jurisdiction of Commission to set rate is not triggered, either by application of utility or its customers or upon Commission's own motion, locality may set rates of small water utility. Utility rate set by locality is subject to change by Commission should hearing on amount of increase be ordered.

Mr. George Mason III

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You ask whether the Board of Supervisors of Westmoreland County may exercise concurrent jurisdiction with the State Corporation Commission (the "Commission") over a private company that operates water systems within the county, particularly in regard to the rates the company charges its customers within the county.

You state that the company is a small water utility subject to the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 through 56-265.13:7 of the *Code of Virginia* (the "Act").¹ Section 56-265.13:4 of the Act requires that the charges made by any small water utility shall be "reasonable and just."² Section 56-265.13:5(B) of the Act requires the utility to notify its customers and the Commission at least forty-five days in advance of any changes in its rates, and § 56-265.13:6(A) authorizes the Commission to hold a hearing on the change. Section 56-265.13:6(A) provides:

Upon application to the Commission by at least twenty-five percent of all customers affected by a rate change or by 250 affected customers, whichever number is lesser, or by the small water or sewer utility itself, or by the Commission, upon its own motion, a hearing shall be held after at least thirty days' notice to the small water or sewer utility and to its customers. The Commission may order such improvements or changes in service, measurements, practices, acts, rates, charges, fees, and rules and regulations of such utility as are just and reasonable.

When a hearing is ordered, the Commission shall have the authority to suspend such rates, charges, fees, and rules and regulations for no more than sixty days or to declare them to be interim, or both. Interim rates, fees, and charges shall be subject to refund with interest until such time as the Commission has made its final determination in the proceeding. Upon completion of the hearing and decision, the Commission may order such public utility to refund, with interest at a rate set by the

Commission, the portion of such rates, charges, or fees found not justified by its decision.

Section 56-265.13:7(A) of the Act designates certain other sections of Title 56 also applicable to small water utilities. None of the designated sections brings small water utilities within the Commission's general authority to set the rates of public utility companies.³

Section 15.2-2111 grants localities the power to regulate water and sewer systems. Section 15.2-2111 provides:

Any locality may exercise its powers to regulate ... water service notwithstanding any anticompetitive effect. Such regulation may include the establishment of an exclusive service area for any ... water system, including a system owned or operated by the locality, the fixing of rates or charges for any ... water service, and the prohibition, restriction or regulation of competition between entities providing ... water service.

No power herein granted shall alter or amend the powers or the duties of any present or future authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) nor confer any right or responsibility upon the governing body of any locality which would supersede or be inconsistent with any of the duties or responsibilities of the State Water Control Board.

You conclude in your written opinion that, because neither the Act nor § 15.2-2111 grants the Commission exclusive authority over the rates of a small water public utility, the locality has concurrent jurisdiction with the Commission to regulate the rates such a system charges its customers in the county.⁴ By enacting §§ 56-265.13:6 and 15.2-2111, the General Assembly intends to grant both the Commission and a locality the authority to regulate the rates of a small water utility. Section 56-265.13:6(A) authorizes the Commission to hold a hearing on a change in the rates of a small water utility and to set a rate that it determines to be "just and reasonable." Section 15.2-2111 authorizes any locality to regulate water systems and expressly includes within the locality's power "the fixing of rates or charges for any ... water service." Section 15.2-2111 contains no language indicating a legislative intent to exclude from the locality's power those entities that constitute small water utilities under the Act. Since both the Commission and the locality have authority to regulate the rates of a small water utility, the question is under what circumstances does the regulatory authority reside in the Commission and under what circumstances does it reside in the locality.

A basic principle of statutory construction is that, when construing statutes dealing with the same subject, each section should be considered in conjunction with every other section to produce a harmonious result and to give effect to each statute to the maximum extent possible.⁵ While a small water utility is to provide notice to the Commission of any change in its rates,⁶ the Act does not require that in every instance a small water utility obtain the Commission's approval of the change. Rather, the hearing and rate-setting provisions of § 56-265.13:6 are triggered only upon application to the Commission by the small water utility or its customers or upon the Commission's own motion. If the Commission holds a hearing under § 56-265.13:6(A), the Commission has the authority to set a rate that it determines to be "just and reasonable." If, however, the jurisdiction of the Commission to set the rate is not triggered under § 56-265.13:6, the locality may set the rates of a small water utility under § 15.2-2111.

Further, because the Act and § 15.2-2111 deal with the same subject matter, § 15.2-2111 must be read in conjunction with the rate-setting provisions of the Act. Thus, should a locality elect to

exercise its power under § 15.2-2111 to fix the rates of a small water utility, the locality is to fix the rates in accordance with the requirements of § 56-265.13:4 of the Act. Section 56-265.13:4 establishes the "reasonable and just" standard for the fees charged by small water utilities and includes five types of expenses to consider in setting "the lowest charges as shall produce sufficient revenues" to pay the expenses.

Section 15.2-2111 also must be read in conjunction with § 56-265.13:6. No language in either § 15.2-2111 or § 56-265.13:6 prohibits the Commission's exercise of its power under § 56-265.13:6 once a locality has set the rate under § 15.2-2111. It is my opinion that, if a locality fixes the amount of the increase under § 15.2-2111, the fee set by the locality will not control if either the affected customers, the utility itself, or the Commission chooses to hold a hearing on the amount of the change pursuant to § 56-265.13:6(A). Should a hearing be ordered, the Commission then has the authority to determine the amount of the fee increase. This result not only gives effect to both §§ 15.2-2111 and 56-265.13:6 to the maximum extent possible, but also is consistent with the rule of statutory construction that the more specific statute, which in this instance is § 56-265.13:6, prevails over the more general.⁷ Whether the Commission or the locality sets the rate, the amount of the increase is to be determined in accordance with the criteria set out in § 56-265.13:4.

¹The Act applies to "every certificated water or sewer public utility company ... with gross annual operating revenues of less than one million dollars." Section 56-265.13:3.

²Section 56-265.13:4 defines "reasonable and just" as "the lowest charges as shall produce sufficient revenues to pay all lawful and necessary expenses incident to" operating the system, paying indebtedness and taxes, providing working capital, and compensating the owners of the utility.

³Article 2, Chapter 10 of Title 56, §§ 56-234 to 56-245.1:1, relates specifically to the Commission's regulation of the rates and charges of public utility companies. Section 56-265.13:7(A) designates five sections of Article 2 that apply to small water utilities: § 56-234.4 (authorizing Commission to investigate public utilities to determine efficiency and economy of operations); § 56-236 (requiring public utilities to file with Commission and keep open to public inspection schedules of rates and charges); § 56-239 (authorizing public utilities to appeal decisions or orders of Commission to Supreme Court of Virginia); § 56-245 (authorizing Commission to issue temporary order increasing rates in emergency cases); and § 56-245.1 (requiring public utilities to keep meters in good working condition).

⁴Section 2.1-118 requires that any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions."

⁵See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953).

⁶Section 56-265.13:5(B).

⁷See *Dodson v. Potomac Mack Sales & Service*, 241 Va. 89, 400 S.E.2d 178 (1991); *Barr v. Town & Country Properties*, 240 Va. 292, 396 S.E.2d 672 (1990); *Va. National Bank v. Harris*, 220 Va. 336, 257 S.E.2d 867 (1979).